

Attorney Docket No. 9400-43
Application Serial No. 10/677,417
Filed: October 2, 2003
Page 13

REMARKS

In response to the Office Action dated February 8, 2005 ("the Action"), Applicants respectfully request reconsideration based on the above claim amendments and the following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance.

Claims 1-32 are pending in the application but stand rejected in view of certain cited prior art references. Applicants respectfully disagree and will address the rejections in the order presented in the Action.

I. Disclosure Objection for Typographical Error

Applicants have amended the specification to obviate the typographical error noted by the Examiner on page 7 of the specification. Applicants have also corrected another identified typographical error as noted.

II. The §112, Second Paragraph Rejections

The Action rejects Claims 4-19, 22 and 28-32 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More particularly, the Action rejects to the use of "and/or" and the Examiner suggests the use of the phrase "at least one of... and..." as appropriate for each occurrence. Applicants respectfully disagree that the use of "and/or" makes the affected claims unclear. One of skill in the art would understand that the term "and/or" includes any and all combinations of one or more of the associated listed items. In support of the accepted use of this term, Applicants are attaching an electronic search summary of hits 1-50 of records in the issued U.S. patent database. The search result summary used the electronic search term "and/or" in the claims. As shown, 112,825 patents were shown to use this terminology. Accordingly, Applicants respectfully submit that by the USPTO's own patent records the claim recitation does not make the claims unclear and requests that these claim rejections be withdrawn.

Attorney Docket No. 9400-43
Application Serial No. 10/677,417
Filed: October 2, 2003
Page 14

Applicants have amended the other claims to obviate the objections noted by the Examiner. In view of the above, Applicants request that the §112, second paragraph rejections be withdrawn.

III. The Art Rejections

The Action rejects Claims 1-32 under the obviousness-type double patenting rejection based on U.S. Patent No. 6,741,926 in light of U.S. Patent No. 5,774,827 to Smith ("Smith"). Applicants respectfully disagree. However, Applicants submit that this rejection is obviated by the present amendment to the claims.

The Action also rejects certain of the claims as being anticipated by and/or obvious over Smith or WO 02/01532 to Trayford ("Trayford"), alone or in combination with other secondary references.

Smith proposes the use of "preselected commuter route(s)" obtained from the user's registration information (col. 2, lines 1-3). Smith fails to teach or suggest the use of a "learn mode" whereby the system can itself define travel routes for a user. (see pending Claims 33 and 34-46).

Smith also proposes calculating current travel times in different selected routes and relaying to the user so the user can make a decision about which route to take (col. 2, lines 9-19). Smith states that where a portable device 12 includes a GPS, the central facility can determine periodic positions of the device 12 and the central facility would have the ability to switch the user to a new route if traffic conditions deteriorate on the user's present route (col. 3, lines 49-54). Smith fails to teach or suggest generating a virtual boundary that is associated with a respective subscriber that can be used to determine what data can impact drivability, thereby providing for an improved location-intelligent system. (see Claims 1, 5, 19, 20, 21, 28, 32, 34).

Smith also fails to teach or suggest the use of drivability ratings that can consider weather, traffic congestion, and accident data. The relevant traffic conditions can be evaluated using the drivability ratings (see e.g., Claims 3, 10, 22) and can consider crime (Claim 11).

Attorney Docket No. 9400-43
Application Serial No. 10/677,417
Filed: October 2, 2003
Page 15

Trayford fails to teach or suggest the use of virtual boundaries, a learn mode, or drivability ratings. Trayford does propose using historical and real time traffic data collected from traffic sensors and detectors (col. 3, lines 3-15). Trayford says that the "means for integrating" the data may include a model that provides an indication of expected delay for a particular link based on historical records (col. 3, lines 21-25). Trayford fails to teach or suggest, *inter alia*, calculating a drivability rating.

U.S. Patent No. 5,959,577 to Fan et al. ("Fan") proposes using a GPS receiver to get a measured position fix on a mobile unit and generate a marker on a map of the area. Fan fails to resolve the deficiencies of the primary references.

Applicants submit that the pending claims are patentable over the cited art. For example, the prior art references fail to teach or suggest at least the use of a virtual boundary, drivability ratings, and/or a "learn mode".

Applicants also submit that the dependent claims recite independently patentable subject matter.

IV. Support for the Claimed Subject Matter

Applicant also submits that the features added to certain of the claims are supported by the specification and/or figures. For example, the virtual boundary feature is described in the application at p. 32, lines 18-26. Similarly, the drivability ratings are described for example, at p. 11, lines 5-20, p.13, lines 16-24, p.31, lines 12-14, and p. 32, line 33. Regarding new Claims 33 and 35-37, the "learn mode" feature is described at p. 31.

Applicants respectfully submit that the pending claims are patentable over the cited art.

V. Information Disclosure Statement (IDS)


Applicants submitted a supplemental IDS on April 12, 2005, and return of an Examiner-initialed copy of the Form PTO-1449 whereby the Examiner acknowledges consideration of the references cited therein is respectfully requested.

Attorney Docket No. 9400-43
Application Serial No. 10/677,417
Filed: October 2, 2003
Page 16

VI. Conclusion

Accordingly, Applicants submit that the present application is in condition for allowance and the same is earnestly solicited. Should the Examiner have any matters outstanding of resolution, he is encouraged to telephone the undersigned at 919-854-1400 for expeditious handling.

Respectfully submitted,



Julie H. Richardson
Registration No.: 40,142

USPTO Customer No. 20792
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

CERTIFICATION OF FACSIMILE TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office via the central facsimile number 703-872-9306 on April 14, 2005.


Rosa Lee Brinson